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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,987	03/10/2006	Horst Knoch	P2003,0600	5568
7590 Michael E Carroll Jr PO Box 489 Hickory, NC 28603-0489			EXAMINER VARGOT, MATHEU'D	
			ART UNIT	PAPER NUMBER
			1791	
			MAIL DATE	DELIVERY MODE
			04/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/571,987

Applicant(s)

KNOCH ET AL.

Examiner

Mathieu D. Vargot

Art Unit

1791

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 11-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1.The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Franke et al (see Figs. 1, 5 and 5a; col. 6, lines 1-5 and lines 12-17).

Franke et al discloses the instant method for the production of an optical transmission element (see Fig. 5) having at least one waveguide (1) and comprising a chamber element (2) surrounding the waveguide the method comprising applying a filler composition in a foamed state discontinuously (see foamed elements 8) to the waveguide (1) whereby the foamed elements each surround the waveguide and forming the chamber element (2) by extrusion—see Fig. 1. As set forth in the previous actions, it is submitted that the filler composition inherently stabilizes within the chamber element and would become a plurality of dry, compressible filler elements. The foam material is taught as being polyurethane (col. 6, lines 1-5) and it is submitted that the foam elements do not alter the cross section of the chamber. Note that the term “discontinuously” does not mean “randomly”. Ie, even if the foamed elements are placed around the waveguide within a regular, repeating interval, the placement would still be discontinuous since the elements do not touch each other.

2.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franke et al.

Franke et al is applied essentially for reasons of record in the previous actions concerning dependent claims 4-10. Newly added claim 16 recites essentially the limitations of combined claims 1, 2, 4 and 6, while claims 17-19 add the limitations of claims 7-9, respectively. The newly added claims are rejected for the reasons of record as presented in the previous rejections—and paragraph 1, supra-- concerning claims 1, 2, 4 and 6-9. Claims 1-3 have been additionally rejected under 103 should applicant dispute the 102 rejection in paragraph 1, supra. If the limitations submitted to be inherent in the process of Franke et al are ultimately determined to not be so, then it is submitted that they would have been obvious. It is common in the art that foamed pieces eventually stabilize and become dry and compressible and such would obviously happen to the foamed disk elements of Franke et al.

3.Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's comments concerning the combination with Japanese -209 are now moot, since this reference is no longer being applied. Needless to say, Japanese -209 is not needed against instant claims 1-3, since these claims are either anticipated or rendered obvious over Franke et al alone in the embodiment of Fig. 5—the foam disks surround the optical waveguide. As noted in paragraph 1, supra, the term “discontinuous” simply means “not continuous”, or something that exists or occurs with interruption or end. The

repeated application of the foam disks reads on this. The disks do not touch each other, and hence their application must be discontinuous.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
April 23, 2009

/Mathieu D. Vargot/
Primary Examiner, Art Unit 1791